

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MARK ANTHONY ORTEGA	§	
Plaintiff,	§	
v.	§	
	§	Case No. 5:25-CV-00865-JKP-HJB
TRISMART SOLAR, LLC and JOSE	§	
MANUEL TURRUBIATES	§	
Defendants.	§	

PLAINTIFF’S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

COMES NOW, Plaintiff Mark Anthony Ortega ("Plaintiff"), appearing Pro Se, and files this Motion for Leave to File Second Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2). In support thereof, Plaintiff respectfully shows the Court the following:

I. BACKGROUND AND NECESSITY FOR AMENDMENT

1. Plaintiff filed his Original Complaint on July 18, 2025, alleging violations of the TCPA and Texas Business and Commerce Code.
2. Defendant TriSmart Solar, LLC ("TriSmart") filed its Answer on September 18, 2025, represented by Timothy R. Allen. Upon review of the Answer, Mr. Allen appears to be In-House Counsel, using the email address tallen@trismartsolar.com.
3. On January 12, 2026, this Court held a scheduled hearing. Defendant’s counsel failed to appear.
4. Since that date, Plaintiff has obtained information giving rise to a reasonable belief that TriSmart has ceased standard business operations and terminated the majority, if not all, of its workforce, including its legal counsel.

5. Furthermore, Plaintiff has received information that on or around January 2, 2026, approximately \$700,000.00 in corporate liquid assets were transferred from TriSmart Solar, LLC to its Chief Executive Officer, Mark Bench, or entities controlled by him.

6. Plaintiff alleges on information and belief that this transfer was made with the actual intent to hinder, delay, or defraud creditors, including the Plaintiff, and has rendered the Defendant entity insolvent.

7. Consequently, proceeding solely against TriSmart Solar, LLC would be futile, as the entity appears to be a "shell" from which assets have been stripped to avoid liability.

8. Plaintiff seeks to amend his complaint to:

- a. Add Mark Bench individually as a Defendant;
- b. Assert claims for Fraudulent Transfer under the Texas Uniform Fraudulent Transfer Act (Tex. Bus. & Com. Code § 24.001 et seq.); and
- c. Assert claims for to hold Mark Bench jointly and severally liable for the debts of the LLC.

II. LEGAL STANDARD

9. Federal Rule of Civil Procedure 15(a)(2) provides that the Court should "freely give leave [to amend] when justice so requires." The Supreme Court has emphasized that this mandate is to be heeded. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

10. Allowing this amendment serves the interest of justice. If Plaintiff is not permitted to amend, he faces the prejudice of litigating a valid claim against a defunct entity while the assets necessary to satisfy a judgment are dissipated by the company's principal.

11. There is no undue delay, bad faith, or dilatory motive on the part of the Plaintiff. These facts, the firing of staff and transfer of funds, arose only within the last 10 days.

12. The amendment is not futile, as Texas law specifically provides for the recovery of fraudulently transferred assets and the piercing of the corporate veil in cases of actual fraud.

III. PRAYER

WHEREFORE, Plaintiff Mark Anthony Ortega respectfully requests that the Court grant this Motion for Leave to File Second Amended Complaint, order that the Amended Complaint attached hereto as **Exhibit A** be deemed filed, and authorize the issuance of summons for the newly added Defendant, Mark Bench.

Dated: January 15, 2026

Respectfully submitted,

/s/ Mark Anthony Ortega
Mark Anthony Ortega
Plaintiff, Pro Se
mortega@utexas.edu
PO Box 702099
San Antonio, TX 78270
210) 744-9663

CERTIFICATE OF CONFERENCE

I hereby certify that I attempted to confer with opposing counsel, Timothy R. Allen, via email regarding the relief requested in this motion and counsel did not respond to my correspondence.

/s/ Mark Anthony Ortega
Mark Anthony Ortega

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2026 a true and correct copy of the foregoing document was served via the Court's CM/ECF system:

Timothy R. Allen
600 Northpark Central Drive, Suite 140
Houston, Texas 77073
tallen@trismartsolar.com
Attorney for Defendant TriSMART Solar, LLC

It was also served upon the defendant Turrubiates via First Class Mail to:

Jose Manuel Turrubiates
533 E Carson St
San Antonio, TX, 78208

/s/ Mark Anthony Ortega
Mark Anthony Ortega